

TEXAS APPRAISER LICENSING  
AND CERTIFICATION BOARD

vs.

JOHN B. AUSTIN  
TX-1327166-R

§  
§  
§  
§  
§  
§  
§  
§

DOCKETED COMPLAINT NO.  
06-119

**AGREED FINAL ORDER**

On this the 14<sup>th</sup> day of FEBRUARY, 2008, the Texas Appraiser Licensing and Certification Board, (the Board), considered the matter of the certification of John B. Austin, (Respondent). The Board makes the following findings of fact and conclusions of law and enters this Order in accordance with TEX. OCC. CODE § 1103.458:

**FINDINGS OF FACT**

1. Respondent John B. Austin is a Texas state certified residential real estate appraiser, holds certification number TX-1327166-R, and has been certified by the Board during all times material to the above-noted complaint cases.
2. Respondent is subject to the jurisdiction of the Board, the Texas Appraiser Licensing and Certification Act, TEX. OCC. CODE § 1103 et. seq. (the Act), the Rules of the Board, 22 TEX. ADMIN. CODE §§153, 155, 157 (the Rules), and the Uniform Standards of Professional Appraisal Practice (USPAP) in effect at the time of the appraisal.
3. On or about September 23<sup>rd</sup>, 2004, February 15<sup>th</sup>, 2005, December 2<sup>nd</sup>, 2004, February 23<sup>rd</sup>, 2005, and March 18<sup>th</sup>, 2005 Respondent appraised real property located at 509 Mill Street, San Marcos, Texas 78666 ("the Mill property"), 24718 US Highway 281 South, San Antonio, Texas 78264 ("the 281 property"), 325 Terry Lane, Lytle, Texas 78052 ("the Terry property"), 179 Blue Stream, Sequin, Texas 78155 ("the Blue property") and 805 Deer Run Pass, Canyon Lake, Texas 78133 ("the Deer property") respectively (collectively "the properties").
4. On or about May 16<sup>th</sup>, 2006, the Complainant, Jack McComb, filed a staff-initiated complaint with the Board. The complaint was based upon information from Larry Thompson, the Acting Director of the Processing and Underwriting Division of the United States Department of Housing and Urban Development ("HUD"). HUD alleged that the Respondent had produced an appraisal report that contained various USPAP violations which resulted in an inflated market value determination for the properties appraised by Respondent.
5. On or about May 17<sup>th</sup>, 2006 the Board, in accordance with the mandate of the Administrative Procedure Act (the APA), TEX. GOV'T CODE ANN. § 2001, and TEX. OCC. CODE CHPT. 1103, notified Respondent of the nature of the accusations involved and

Respondent was afforded an opportunity to respond to the accusations alleged in the complaint. Respondent's response was received.

6. The Enforcement Division has concluded that the Respondent violated 22 TEX. ADMIN. CODE §§ 153.20(a)(3) and 155.1(a) by the following acts or omissions which did not conform to USPAP in effect at the time of the appraisal report for the Mill property:

- a. USPAP Competency Rule – Respondent failed to adhere to the competency requirements for his appraisal of the Mill property;
- b. USPAP Supplemental Standards Rule – Respondent failed to comply with the supplemental standards imposed by HUD;
- c. USPAP Standard 1-1(a) – Respondent failed to demonstrate the correct employment of recognized methods and techniques necessary to produce a credible appraisal report;
- d. USPAP Standard 1-1(b) – Respondent committed substantial errors of both omission and commission that significantly impacted his appraisal report;
- e. USPAP Standard 1-1(c) – Respondent has rendered appraisal services in a careless or negligent manner;
- f. USPAP Standard 1-2(c) – Respondent has not developed an opinion of reasonable exposure time for the Mill property;
- g. USPAP Standard 1-2(e) – Respondent did not identify the relevant characteristics of the Mill property including sales concessions related to the Mill property and the comparable sales used in his sales comparison analysis;
- h. USPAP Standard 1-2(f) – Respondent failed to identify and develop a scope of work appropriate for completion of the Mill property appraisal assignment in a credible manner;
- i. USPAP Standard 1-2(g) – Respondent has failed to identify extraordinary assumptions relied upon which were necessary to produce a credible appraisal report;
- j. USPAP Standard 1-3(b) and 2-2(b)(x) – Respondent failed to provide a brief summary of his rationale for his determination of the Mill property's highest and best use;
- k. USPAP Standard 1-4(b)(i) – Respondent failed to develop an opinion of site value by an appropriate appraisal method or technique;

- l. USPAP Standard 1-5(a) – Respondent failed to analyze the Mill property's sales contract or listing history;
- m. USPAP Standard 1-6(a) – Respondent failed to reconcile the quality and quantity of data available and analyzed within the approaches to value that were used;
- n. USPAP Standard 1-6(b) – Respondent failed to reconcile the applicability of the approaches used to arrive at the value conclusion;
- o. USPAP Standard 2 – Respondent communicated his appraisal in a manner that was misleading;
- p. USPAP Standard 2-1(a) – Respondent set forth the Mill property appraisal in a manner that was misleading to readers of the report;
- q. USPAP Standard 2-1(b) – Respondent failed to provide sufficient information to understand the Mill property report properly;
- r. USPAP Standard 2-1(c) – Respondent did not accurately disclose extraordinary assumptions nor indicate their impact on value;
- s. USPAP Standards 2-2(b)(iii) – Respondent failed to summarize information sufficient to identify all the relevant characteristics of the Mill property that were involved in the appraisal assignment;
- t. USPAP Standard 2-2(b)(vii) – Respondent failed to summarize the actual scope of work performed;
- u. USPAP Standard 2-2(b)(ix) – Respondent did not summarize the information analyzed, the appraisal procedures followed, and the reason that supports the analyses, opinions, and conclusions;

7. The Enforcement Division has concluded that the Respondent violated 22 TEX. ADMIN. CODE §§ 153.20(a)(3) and 155.1(a) by the following acts or omissions which did not conform to USPAP in effect at the time of the appraisal report for the 281 property:

- a. USPAP Competency Rule – Respondent failed to adhere to the competency requirements for his appraisal of the 281 property;
- b. USPAP Supplemental Standards Rule – Respondent failed to comply with the supplemental standards imposed by HUD;
- c. USPAP Standard 1-1(a) – Respondent failed to demonstrate the correct employment of recognized methods and techniques necessary to produce a credible appraisal report;

- d. USPAP Standard 1-1(b) – Respondent committed substantial errors of both omission and commission that significantly impacted his appraisal report;
- e. USPAP Standard 1-1(c) – Respondent has rendered appraisal services in a careless or negligent manner;
- f. USPAP Standard 1-2(c) – Respondent has not developed an opinion of reasonable exposure time for the 281 property;
- g. USPAP Standard 1-2(e) – Respondent did not identify the relevant characteristics of the 281 property including sales concessions related to the 281 property and the comparable sales used in his sales comparison analysis;
- h. USPAP Standard 1-2(f) – Respondent failed to identify and develop a scope of work appropriate for completion of the 281 property appraisal assignment in a credible manner;
- i. USPAP Standard 1-2(g) – Respondent has failed to identify extraordinary assumptions relied upon which were necessary to produce a credible appraisal report;
- j. USPAP Standard 1-3(b) and 2-2(b)(x) – Respondent failed to provide a brief summary of his rationale for his determination of the 281 property's highest and best use;
- k. USPAP Standard 1-4(a) – Respondent failed to provide adequate analysis and support of the comparable sales used in his sales comparison approach;
- l. USPAP Standard 1-4(b)(i) – Respondent failed to develop an opinion of site value by an appropriate appraisal method or technique;
- m. USPAP Standard 1-5(a) – Respondent failed to analyze the 281 property's sales contract or listing history;
- n. USPAP Standard 1-6(a) – Respondent failed to reconcile the quality and quantity of data available and analyzed within the approaches to value that were used;
- o. USPAP Standard 1-6(b) – Respondent failed to reconcile the applicability of the approaches used to arrive at the value conclusion;
- p. USPAP Standard 2 – Respondent communicated his appraisal in a manner that was misleading;

- q. USPAP Standard 2-1(a) – Respondent set forth the 281 property appraisal in a manner that was misleading to readers of the report;
- r. USPAP Standard 2-1(b) – Respondent failed to provide sufficient information to understand the 281 property report properly;
- s. USPAP Standard 2-1(c) – Respondent did not accurately disclose extraordinary assumptions nor indicate their impact on value;
- t. USPAP Standards 2-2(b)(iii) – Respondent failed to summarize information sufficient to identify all the relevant characteristics of the 281 property that were involved in the appraisal assignment;
- u. USPAP Standard 2-2(b)(vii) – Respondent failed to summarize the actual scope of work performed;
- v. USPAP Standard 2-2(b)(ix) – Respondent did not summarize the information analyzed, the appraisal procedures followed, and the reason that supports the analyses, opinions, and conclusions;

8. The Enforcement Division has concluded that the Respondent violated 22 TEX. ADMIN. CODE §§ 153.20(a)(3) and 155.1(a) by the following acts or omissions which did not conform to USPAP in effect at the time of the appraisal report for the Terry property:

- a. USPAP Competency Rule – Respondent failed to adhere to the competency requirements for his appraisal of the Terry property;
- b. USPAP Supplemental Standards Rule – Respondent failed to comply with the supplemental standards imposed by HUD;
- c. USPAP Standard 1-1(a) – Respondent failed to demonstrate the correct employment of recognized methods and techniques necessary to produce a credible appraisal report;
- d. USPAP Standard 1-1(b) – Respondent committed substantial errors of both omission and commission that significantly impacted his appraisal report;
- e. USPAP Standard 1-1(c) – Respondent has rendered appraisal services in a careless or negligent manner;
- f. USPAP Standard 1-2(c) – Respondent has not developed an opinion of reasonable exposure time for the Terry property;
- g. USPAP Standard 1-2(e) – Respondent did not identify the relevant characteristics of the Terry property including sales concessions related to

the Terry property and the comparable sales used in his sales comparison analysis;

- h. USPAP Standard 1-2(f) – Respondent failed to identify and develop a scope of work appropriate for completion of the Terry property appraisal assignment in a credible manner;
- i. USPAP Standard 1-2(g) – Respondent has failed to identify extraordinary assumptions relied upon which were necessary to produce a credible appraisal report;
- j. USPAP Standard 1-3(b) and 2-2(b)(x) – Respondent failed to provide a brief summary of his rationale for his determination of the Terry property's highest and best use;
- k. USPAP Standard 1-4(b)(i) – Respondent failed to develop an opinion of site value by an appropriate appraisal method or technique;
- l. USPAP Standard 1-5(a) – Respondent failed to analyze the Terry property's sales contract or listing history;
- m. USPAP Standard 1-6(a) – Respondent failed to reconcile the quality and quantity of data available and analyzed within the approaches to value that were used;
- n. USPAP Standard 1-6(b) – Respondent failed to reconcile the applicability of the approaches used to arrive at the value conclusion;
- o. USPAP Standard 2 – Respondent communicated his appraisal in a manner that was misleading;
- p. USPAP Standard 2-1(a) – Respondent set forth the Terry property appraisal in a manner that was misleading to readers of the report;
- q. USPAP Standard 2-1(b) – Respondent failed to provide sufficient information to understand the Terry property report properly;
- r. USPAP Standard 2-1(c) – Respondent did not accurately disclose extraordinary assumptions nor indicate their impact on value;
- s. USPAP Standards 2-2(b)(iii) – Respondent failed to summarize information sufficient to identify all the relevant characteristics of the Terry property that were involved in the appraisal assignment;
- t. USPAP Standard 2-2(b)(vii) – Respondent failed to summarize the actual scope of work performed;

- u. USPAP Standard 2-2(b)(ix) – Respondent did not summarize the information analyzed, the appraisal procedures followed, and the reason that supports the analyses, opinions, and conclusions;

9. The Enforcement Division has concluded that the Respondent violated 22 TEX. ADMIN. CODE §§ 153.20(a)(3) and 155.1(a) by the following acts or omissions which did not conform to USPAP in effect at the time of the appraisal report for the Blue property:

- a. USPAP Competency Rule – Respondent failed to adhere to the competency requirements for his appraisal of the Blue property;
- b. USPAP Supplemental Standards Rule – Respondent failed to comply with the supplemental standards imposed by HUD;
- c. USPAP Standard 1-1(a) – Respondent failed to demonstrate the correct employment of recognized methods and techniques necessary to produce a credible appraisal report;
- d. USPAP Standard 1-1(b) – Respondent committed substantial errors of both omission and commission that significantly impacted his appraisal report;
- e. USPAP Standard 1-1(c) – Respondent has rendered appraisal services in a careless or negligent manner;
- f. USPAP Standard 1-2(c) – Respondent has not developed an opinion of reasonable exposure time for the Blue property;
- g. USPAP Standard 1-2(e) – Respondent did not identify the relevant characteristics of the Blue property including sales concessions related to the Blue property and the comparable sales used in his sales comparison analysis;
- h. USPAP Standard 1-2(f) – Respondent failed to identify and develop a scope of work appropriate for completion of the Blue property appraisal assignment in a credible manner;
- i. USPAP Standard 1-2(g) – Respondent has failed to identify extraordinary assumptions relied upon which were necessary to produce a credible appraisal report;
- j. USPAP Standard 1-3(b) and 2-2(b)(x) – Respondent failed to provide a brief summary of his rationale for his determination of the Blue property's highest and best use;

- k. USPAP Standard 1-4(b)(i) – Respondent failed to develop an opinion of site value by an appropriate appraisal method or technique;
- l. USPAP Standard 1-5(a) – Respondent failed to analyze the Blue property's sales contract or listing history;
- m. USPAP Standard 1-6(a) – Respondent failed to reconcile the quality and quantity of data available and analyzed within the approaches to value that were used;
- n. USPAP Standard 1-6(b) – Respondent failed to reconcile the applicability of the approaches used to arrive at the value conclusion;
- o. USPAP Standard 2 – Respondent communicated his appraisal in a manner that was misleading;
- p. USPAP Standard 2-1(a) – Respondent set forth the Blue property appraisal in a manner that was misleading to readers of the report;
- q. USPAP Standard 2-1(b) – Respondent failed to provide sufficient information to understand the Blue property report properly;
- r. USPAP Standard 2-1(c) – Respondent did not accurately disclose extraordinary assumptions nor indicate their impact on value;
- s. USPAP Standards 2-2(b)(iii) – Respondent failed to summarize information sufficient to identify all the relevant characteristics of the Blue property that were involved in the appraisal assignment;
- t. USPAP Standard 2-2(b)(vii) – Respondent failed to summarize the actual scope of work performed;
- u. USPAP Standard 2-2(b)(ix) – Respondent did not summarize the information analyzed, the appraisal procedures followed, and the reason that supports the analyses, opinions, and conclusions;

10. The Enforcement Division has concluded that the Respondent violated 22 TEX. ADMIN. CODE §§ 153.20(a)(3) and 155.1(a) by the following acts or omissions which did not conform to USPAP in effect at the time of the appraisal report for the Deer property:

- a. USPAP Competency Rule – Respondent failed to adhere to the competency requirements for his appraisal of the Deer property;
- b. USPAP Supplemental Standards Rule – Respondent failed to comply with the supplemental standards imposed by HUD;



- c. USPAP Standard 1-1(a) – Respondent failed to demonstrate the correct employment of recognized methods and techniques necessary to produce a credible appraisal report;
- d. USPAP Standard 1-1(b) – Respondent committed substantial errors of both omission and commission that significantly impacted his appraisal report;
- e. USPAP Standard 1-1(c) – Respondent has rendered appraisal services in a careless or negligent manner;
- f. USPAP Standard 1-2(c) – Respondent has not developed an opinion of reasonable exposure time for the Deer property;
- g. USPAP Standard 1-2(e) – Respondent did not identify the relevant characteristics of the Deer property including sales concessions related to the Deer property and the comparable sales used in his sales comparison analysis;
- h. USPAP Standard 1-2(f) – Respondent failed to identify and develop a scope of work appropriate for completion of the Deer property appraisal assignment in a credible manner;
- i. USPAP Standard 1-2(g) – Respondent has failed to identify extraordinary assumptions relied upon which were necessary to produce a credible appraisal report;
- j. USPAP Standard 1-3(b) and 2-2(b)(x) – Respondent failed to provide a brief summary of his rationale for his determination of the Deer property's highest and best use;
- k. USPAP Standard 1-4(b)(i) – Respondent failed to develop an opinion of site value by an appropriate appraisal method or technique;
- l. USPAP Standard 1-5(a) – Respondent failed to analyze the Deer property's sales contract or listing history;
- m. USPAP Standard 1-6(a) – Respondent failed to reconcile the quality and quantity of data available and analyzed within the approaches to value that were used;
- n. USPAP Standard 1-6(b) – Respondent failed to reconcile the applicability of the approaches used to arrive at the value conclusion;
- o. USPAP Standard 2 – Respondent communicated his appraisal in a manner that was misleading;

- p. USPAP Standard 2-1(a) – Respondent set forth the Deer property appraisal in a manner that was misleading to readers of the report;
  - q. USPAP Standard 2-1(b) – Respondent failed to provide sufficient information to understand the Deer property report properly;
  - r. USPAP Standard 2-1(c) – Respondent did not accurately disclose extraordinary assumptions nor indicate their impact on value;
  - s. USPAP Standards 2-2(b)(iii) – Respondent failed to summarize information sufficient to identify all the relevant characteristics of the Deer property that were involved in the appraisal assignment;
  - t. USPAP Standard 2-2(b)(vii) – Respondent failed to summarize the actual scope of work performed;
  - u. USPAP Standard 2-2(b)(ix) – Respondent did not summarize the information analyzed, the appraisal procedures followed, and the reason that supports the analyses, opinions, and conclusions;
11. The Enforcement Division concluded that the Respondent violated 22 TEX. ADMIN. CODE § 153.20(a)(9) by making material misrepresentations and omissions of material facts in the appraisal report for the properties. These material misrepresentations and omissions of material fact include: failing to disclose and analyze sales concessions and failing to analyze and disclose the contract of sale and listing history of the properties.

## CONCLUSIONS OF LAW

1. The Texas Appraiser Licensing and Certification Board has jurisdiction over this matter pursuant to the Texas Appraiser Licensing and Certification Act, TEX. OCC. CODE § 1103 et. seq.
2. Respondent violated the following USPAP provisions as prohibited by 22 TEX. ADMIN. CODE §§ 153.20(a)(3) and 155.1(a): USPAP Competency Rule; USPAP Supplemental Standards Rule; USPAP Standards Rules: 1-1(a), 1-1(b), 1-1(c), 1-2(c), 1-2(e), 1-2(f), 1-2(g), 1-3(b) and 2-2(b)(x), 1-4(a), 1-4(b)(i), 1-5(a), 1-6(a), 1-6(b), 2, 2-1(a), 2-1(b), 2-1(c), 2-2(b)(iii), 2-2(b)(vii), and 2-2(b)(ix).
3. Respondent violated 22 TEX. ADMIN. CODE § 153.20(a)(9) by making material misrepresentations and omissions of material facts in his appraisal reports for the properties;

Based on the above findings of fact and conclusions of law, the Board **ORDERS** that the Respondent:

- a. Pay to the Board an administrative penalty of \$2,000.00;
  - i. Payment of the administrative penalty shall be made in four equal, \$500.00 installments with the first payment being due on or before January 2<sup>nd</sup>, 2008 and the remaining payments being due monthly thereafter;
- b. Shall have his certification suspended for four months , with the suspension being fully probated under the condition that Respondent timely remit all installment payments of the \$2,000.00 administrative penalty;
- c. Attend and complete a minimum, 15 classroom-hour course in USPAP;
- d. Attend and complete a minimum, 15 classroom-hour course in the Sales Comparison Approach;
- e. Attend and complete a minimum, 15 classroom-hour course in Residential Case Studies;
- f. Attend and complete a minimum, 15 classroom-hour course in the Cost Approach;
- g. Attend and complete a minimum, 7 classroom-hour course in Report Writing;
- h. Comply with all provisions of the Act, the Rules of the Board, and USPAP in the future, or be subjected to further disciplinary action.

**ALL CLASSES** required by this Agreed Final Order must be classes approved by the Board and must be completed within **TWELVE MONTHS** of the date of this Order and documentation of attendance and successful completion of the educational requirements of this Order shall be delivered to the Board on or before the end of the twelve-month period indicated. None of the classes or seminars required by this Order may be taken through correspondence courses. All classes must be in-class, have an exam, and Respondent must have a passing grade on the exam given in each class. None of these required classes will count toward Respondent's continuing education requirements for certification.

Payment of the **ADMINISTRATIVE PENALTY** must be by certified funds, and must be completed in accordance with the terms of this Agreed Final Order.

Failure to comply with any of the terms of this Final Agreed Order shall result in initiation of a contested case proceeding against Respondent and after opportunity for a hearing, possible imposition of disciplinary sanctions against Respondent.

Respondent, by signing this Agreed Final Order, neither admits nor denies that the findings of fact and conclusions of law herein set forth are correct; however, Respondent consents

to the entry of this Agreed Order to avoid the expense of litigation and to reach an expeditious resolution of this matter. Respondent also agrees to satisfactorily comply with the mandates of this Agreed Final Order in a timely manner.


Respondent, by signing this Agreed Final Order, waives the Respondent's right to a formal hearing and any right to seek judicial review of this Agreed Final Order. Information about this Agreed Final Order is subject to public information requests and notice of this Agreed Final Order will be published in the Board's newsletter and/or on the Board's web site.

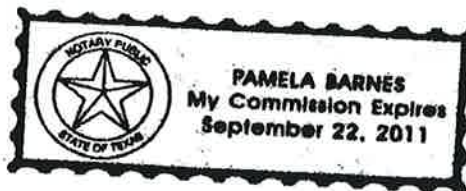
THE DATE OF THIS AGREED FINAL ORDER shall be the date it is executed by the Chairperson of the Texas Appraiser Licensing and Certification Board. The Chairperson has been delegated the authority to sign this Consent Order by the Texas Appraiser Licensing and Certification Board vote.

Signed this 30 day of January, 2008.


  
JOHN B. AUSTIN

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned, on this the 30 day of January, 2008, by JOHN B. AUSTIN, to certify which, witness my hand and official seal.


  
Notary Public Signature  
Pamela Barnes  
Notary Public's Printed Name



Signed by the Commissioner this 7<sup>th</sup> day of Feb, 2008.

  
Timothy K. Irvine, Commissioner  
Texas Appraiser Licensing and Certification Board

Approved by the Board and Signed this 11 day of February, 2008.

  
Larry Kokel, Chairperson  
Texas Appraiser Licensing and Certification Board